



## MEMORANDUM

TO: Mayor Leffingwell and City Council Members

FROM: Jim Smith, Executive Director  
Aviation Department

DATE: October 17, 2012

SUBJECT: City Council Items #3 – 6 on October 18, 2012 Agenda

In response to the letter dated October 16, 2012 from the Minority Trade Association Alliance, ABIA staff and the SMBR office would like to provide the following information to items 1-7 regarding the City of Austin, ABIA and the Federal ACDBE (Part 23) Program.

**1. There are no DBE goals clearly stated in the agenda back-up materials for each of the items related to the ABIA concessions.**

Answer - The ACDBE goals for the specific agenda items were not included as these items are not new contracts, but rather amendments to existing contracts. However, we have included a table below which outlines the goals for prior years and the actual participation recorded. (When reporting ACDBE revenues, or accomplishment, to the Federal Aviation Authority (FAA), we report the information comprehensively.) As can be noted, the program goal for the prior reporting period, FY 2009-2011, the ACDBE goal was 21% of gross revenue. For those years, the City of Austin and ABIA had participation percentages from 23% to 28%, which exceeded our program goals. Based upon our history of participation, and the availability of existing vendors (both certified and non), our program goal for FY 2012-2014 is 14.00% of gross revenue. (A methodology for the new FY goal can be provided upon request.) ABIA has agreed that all future Amendments to contracts will include current and previous ACDBE participation goals.

<i>Fiscal Year</i>	<i>Total (\$)</i>	<i>ACDBE (\$)</i>	<i>ACDBE Participation Goal</i>	<i>Percentage ACDBE Participation</i>	<i>Difference</i>
<i>FY 9</i>	<i>\$30,706,612</i>	<i>\$6,973,093</i>	<i>21%</i>	<i>23%</i>	<i>2%</i>
<i>FY 10</i>	<i>\$33,963,163</i>	<i>\$9,468,267</i>	<i>21%</i>	<i>28%</i>	<i>7%</i>
<i>FY 11</i>	<i>\$38,735,112</i>	<i>\$10,885,784</i>	<i>21%</i>	<i>28%</i>	<i>7%</i>
<i>Total</i>	<i>\$176,562,808</i>	<i>\$36,444,971</i>			
<i>Median Participation/ Average Difference</i>				<i>23%</i>	<i>2%</i>

2. None of the agenda items provide copies of proposed compliance plans and details regarding the utilization of DBEs in each proposed action item (i.e. Names of DBEs, proposed dollar amounts and percentages for each DBE participating).

Answer - Again, the agenda items are not accounting for new contracts but rather amendments to existing contracts. The original contracts contain the original compliance plans detailing the utilization of ACDBEs (names, proposed revenues, and percentage participation). However, we are including a table below detailing existing ACDBEs, percentage participation, and FY11 revenues. In the proposed amendments, the commitment to the goal of 14% ACDBE participation continues to be met.

<i>Concession</i>	<i>ACDBE Participation %</i>	<i>FY 11 Revenue</i>
<i>Auntie Anne's/Lone Star Dreams</i>	<i>100%</i>	<i>\$441,424.17</i>
<i>Brazos Concessions Co./Salt Lick Joint Venture - Food &amp; Beverage</i>	<i>20%</i>	<i>\$304,672.23</i>
<i>Delaware North Companies (DNC) - JMP Enterprises (25%) &amp; The Robena Jackson Agency (10%)</i>	<i>35%</i>	<i>\$1,761,564.49</i>
<i>DNC-Food &amp; Beverage/Brazos Concessions Co./The Salt Lick JV(20%)</i>	<i>20%</i>	<i>\$3,483,543.13</i>
<i>Love Shines, Inc.</i>	<i>100%</i>	<i>\$53,297.00</i>
<i>News &amp; Gifts Int. -Austin JV/Folk Tales Book Store</i>	<i>20%</i>	<i>\$1,366,290.82</i>
<i>NGSI-NL, LLC-Food &amp; Beverage</i>	<i>20%</i>	<i>\$222,743.71</i>
<i>Super Shuttle of Austin (Carter Transportation Services, Inc.)</i>	<i>100%</i>	<i>\$1,757,098.02</i>
<i>Waterloo Ice House - Armadillo Café &amp; Cantina</i>	<i>100%</i>	<i>\$875,539.77</i>
<i>Wok &amp; Roll</i>	<i>100%</i>	<i>\$619,610.96</i>

3. None of the agenda items provide a history of the DBE utilization and performance to date on DBE participation (i.e. Names of DBEs, dollar amounts and percentages for each DBE utilized to-date).

Answer - The table above details the performance of the ACDBEs and the utilization (percentages) for each for FY11. Historical data is not provided but can be made available upon request.

4. None of the agenda items provide a history of the “race-conscious participation” to date on each of the ABIA concessions as allowed under the DBE program.

Answer - Federal Regulations also do not identify ACDBE certified firms by gender or ethnicity, therefore replacement by specific gender or ethnicity is not required. The table above records the ACDBE participation which, for the purposes of our program, reflects “race conscious” utilization.

5. The DBE Program, like the City’s MBE/WBE Program, requires like-kind substitutions if a concessionaire is proposed to be replaced. In 1997, the Austin City Council authorized the concession awards to local DBEs including Armadillo Café listed as ethnic/race specific; in this case, Hispanic-Female. Item #8 on your Council agenda proposes to replace/substitute with another concessionaire that is NOT like-kind.

Answer - The Code of Federal Regulations, Part 23.75 and Part 26.53, outline the requirements recipients (City of Austin) and prime contractors/concessionaires (ABIA) must follow in instances of ACDBE/DBE replacement and substitutions. Federal Regulations do not reference “like-kind” substitutions, but do require a prime contractor/concessionaire to utilize Good Faith Efforts in instances of replacements and substitutions. Federal Regulations also do not identify ACDBE certified firms by gender or ethnicity, therefore replacement by specific gender or ethnicity is not required. Based upon the actions by ABIA it appears Good Faith Efforts were made in accordance with Federal Regulations for replacement/ substitution of an ACDBE firm. These efforts did include outreach events and presentations at ABIA tenant meetings, among a few.

Even though replacement with a “like kind” is not required, the goal of 14% ACDBE participation will continue to be met with the proposed amendments. The Federal Regulations for ACDBE (Part 23) and DBE (Part 26) are included below:

*§ 23.75 (c)(2)(iii) Can recipients enter into long-term, exclusive agreements with concessionaires?  
(iii) An ACDBE concessionaire that is unable to perform successfully will be replaced by another ACDBE concessionaire, if the remaining term of the agreement makes this feasible. In the event that such action is not feasible, you will require the concessionaire to make good faith efforts during the remaining term of the agreement to encourage ACDBEs to compete for the purchases and/or leases of goods and services to be made by the concessionaire.*

*§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?*

*(g) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.*

This Request for Proposals was only open to existing concessionaires as the leases were not for a standard lease term but rather for a short period of time. All existing concessionaires, ACDBE and non-ACDBE, were allowed an opportunity to bid for existing and additional locations within the airport in accordance with our program's race-neutral and race-conscious efforts which can be found below:

1. *Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under 49 CFR Part 23;*
2. *Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;*
3. *When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs;*
4. *Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;*
5. *Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the City of Austin's ACDBE program will affect the procurement process;*
6. *Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and*
7. *Establishing a business development program (see 49 CFR Part 26.35); technical assistance program or taking other steps to foster ACDBE participation in concessions.*

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious ACDBE participation:

1. *The extent that we've exceeded our ACDBE goals in the past;*
2. *ACDBE participation on concession leases that did not have ACDBE requirements;*
3. *Data from private sector MBE/WBE participation;*
4. *ACDBE participation in local programs in which there are no ACDBE concession specific goals;*
5. *Extent of our race-neutral business assistance efforts;*
6. *Information obtained through consultation with stakeholders;*
7. *ACDBE participation on other city or county concession activity; and*

If we project that race-neutral measures, standing alone, are not sufficient to meet an overall goal, we will use the following race-conscious measures to meet the overall goal:

1. *We will establish concession-specific goals for particular concession opportunities.*
2. *Negotiate with potential concessionaires to include ACDBE participation through direct ownership arrangements or measures, in the operation of the concession.*
3. *With prior FAA approval, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.*

**6. None of the Agenda Items provide and/or make reference to the evaluation criteria used to determine and/or quantify staff's recommendation and award to new concessionaires.**

Answer - The evaluation criteria is listed below. Of the existing 3 locations in the East Food Court, staff is recommending that the existing tenants, Wok and Roll and Auntie Anne's, be awarded. As to the third location currently held by an 100% DBE, only one existing concessionaire

proposed on it and that is the joint venture between Brazos Concessions Co./Salt Lick Joint Venture.

The Evaluation criteria are:

1. Merchandising, marketing strategy (if east venue) and products (20 points)
2. Financing Ability (5 points)
3. Management Experience and operations (20 points)
4. Facility design (includes queuing, circulation, visual interest) (15 points)
5. November start date (10 points)
6. Technology (10 points)
7. Compensation plan (10 points)
8. ACDBE Program (10 points)

7. None of the agenda items provide and/or make reference to the standard criteria used to quantify the potential replacement of any or all existing concessionaires and/or criteria used to determine performance standards on any or all concessionaires.

Answer – All three existing locations in the RFP were either on a month to month agreement (Wok and Roll and Auntie Anne's) or terminated (Waterloo) and ABIA sought to issue the RFP to find tenants since the three had missed several earlier deadlines regarding renovations and maintenance repairs. Waterloo was the only terminated concession at the time of the RFP. Therefore, all of the other concessions at the airport were included in the RFP process. In fact, as stated earlier, staff is recommending that two of those tenants, Wok and Roll and Auntie Anne's have their concession agreements extended.

In closing, ABIA has not violated the City and Federal DBE program requirements. We request that Items 3, 4, 5 and 6 remain on the Agenda for consideration by the Austin City Council.

Jim Smith  
Executive Director

Xc: Marc A. Ott, City Manager  
Sue Edwards, Assistant City Manager